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Written statement* submitted by the Japan Federation of Bar Associations, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Opinion concerning the draft United Nations declaration on the right to peace

Purpose of the opinion

The Japan Federation of Bar Associations (the "JFBA") expresses its opinions concerning the draft declaration on the right to peace which is currently under deliberation at the United Nations Human Rights Council, taking its stance of agreeing with the draft made by the United Nations Human Rights Council Advisory Committee on which the ongoing deliberation is based:

1. peace should be considered not only as a principle or a purpose of the international community, but also as rights of individuals;
2. the declaration on the right to peace should be determined by the United Nations Human Rights Council, and be adopted by the General Assembly of the United Nations (the "UN"); and
3. the draft declaration on the right to peace should include details of human rights concerning peaceful life which have not been mentioned in other existing international human rights treaties.

Reasons for the JFBA's opinions

1. Development of peace as rights of individuals to demand peace as well as its consideration as a principle and a purpose

Some say that international peace should be addressed by other UN agencies and be left to intergovernmental consultations, and thus is not necessary to be structured as rights.

However, since national governments tend to give priority to national interest and diplomatic relations, individuals' interests may be disregarded if international peace is only addressed by other UN agencies, and is left to intergovernmental consultations.

In light of the lessons learned from the World War II which was provoked by the action of the government, the Constitution of Japan declared the right to live in peace as the right of all peoples of the world in its Preamble: "[w]e, the Japanese people, (partially omitted) resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution". This clearly shows the manifestation of importance in establishing the right of individuals to live in peace, free from fear and want, in order not to repeat the horrors of war.

This is based on the belief that war can be deterred if the right to live in peace is established for individuals who are potential victims of war.

The Preamble of the Constitution, which declares that all peoples of the world have the right to live in peace, shows that peace should be regarded as rights for attaining international peace at the international level.

2. Adoption of the UN declaration on the right to peace

The right to peace was affirmed in the UN decisions, including a resolution of the "Declaration on the Preparation of Societies for Life in Peace" adopted by the General Assembly in 1978[1], a resolution of the "Right of peoples to peace" adopted by the General Assembly in 1984[2], and resolutions of promotion on the right of peoples to peace which were adopted by the UN Human Rights Council since 2008[3].

Some believe that the peace issues should be addressed solely at the UN Security Council. The problem here is that although it is individuals who are most affected by destruction of peace, the UN Security Council is a

[1] "Declaration on the Preparation of Societies for Life in Peace" (A/RES/33/73).
[2] "Right of peoples to peace" (A/RES/39/11).
[3] "Promotion on the right of peoples to peace" (A/HRC/RES/8/9, A/HRC/RES/11/4, A/HRC/RES/14/3, A/HRC/RES/17/16, A/HRC/RES/20/15, A/HRC/RES/23/16).

mechanism that discusses and determines maintenance and realization of peace among nations, and thus does not directly reflect viewpoints and interests of individuals. Guaranteeing the right to peace as a right of individuals has great significance in that it makes possible the attainment of peace through a democratic process based on the will of those individuals calling for peace.

The declaration on the right to peace should be thus determined by the UN Human Rights Council, and be adopted by the General Assembly of the UN.

3. Inclusion of details of human rights concerning peaceful life in the draft declaration on the right to peace which have not been mentioned in other existing international human rights treaties

The right to live in peace without a threat of war or other horrors has been long recognized as one of fundamental freedoms in international laws of human rights as well. Prior to the establishment of the UN, United States President Franklin Roosevelt proposed "freedom from fear" as one of fundamental freedoms for people in the 1941 State of the Union address known as the Four Freedoms speech. Also, in the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948, the preamble evidently declares "the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people". Around the same time, this trend was followed by the Constitution of Japan which provides in the Preamble that "[w]e recognize that all peoples of the world have the right to live in peace, free from fear and want".

Meanwhile, "freedom from fear" was not mentioned in detail in human rights treaties, including the International Covenants which was expected to embody the Universal Declaration of Human Rights. In order for people to be free from fear, it is vital to implement a number of human rights such as the right to urge a government not to wage war, the right not to be involved in war that a government commences, the right to urge a government to act for prevention and termination of conflicts, and the right to receive relief for war damage. However, these rights concerning peaceful life with unique values have not been elaborated in international conventions pertaining to human rights.

In order to achieve "freedom from fear", it is therefore essential to draft and approve a declaration which proclaims "the right to live in peace" and detailed human rights which derive from such right. This has been supported by practice in the international community and in each country.

The practice in the international community includes: the adoption of the Istanbul Declaration which proclaimed the right to lasting peace as a human right at the Red Cross international conference in 1969[4]; the resolution of the then-UN Commission on Human Rights in 1976 which declared the right to live in peace, stating that "everyone has the right to live in conditions of international peace and security"[5]; and, subsequently, the approval of resolutions pertaining to the right to live in peace by the UN General Assembly in 1978[6] and in 1982[7].

The practice of domestic cases can be seen in court cases in Japan where the right to live in peace was recognized as a concrete right.

In the Naganuma case where residents around bases of the Self Defense Forces (the "SDF") argued that the existence of the SDF bases infringed on the right of residents to live in peace, the Sapporo District Court ruled that the right to live in peace was a constitutional right in 1973[8].

In a lawsuit challenging the constitutionality of the deployment of the SDF to Iraq, although the Nagoya High Court did not recognize the infringement of the right to live in peace, it made a proactive ruling concerning the right to live in peace in 2008[9], stating that "from the fact that the fundamental human rights presently guaranteed by the Constitution could not exist without a foundation of peace, the right to peaceful existence is a fundamental right

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[4] 21st International Conference of the Red Cross and Red Crescent, Resolution 19: Istanbul Declaration, Istanbul, 1969, at 104 International Review of the Red Cross, pp. 620-621.

[5] UN Commission on Human Rights, Resolution 5 (XXXII), 27 February 1976.

[6] See supra note 1.

[7] "Human Rights and Scientific and Technological Developments," UN Doc A/RES/37/189 A, 18 December 1982, para. 6.

[8] The judgment of the Sapporo District Court dated September 9, 1973. Legal standing was denied on the appeal court.

[9] The judgment of the Nagoya High Court dated April 17, 2008. It became a final judgment without being appealed.

which underlies all basic human rights and by virtue of which we can enjoy those right". It further affirmed that the right to peaceful existence included the right not to take part in war as well as the right not to be involved in war.

Also, according to the ruling of a similar case concerning the deployment of the SDF to Iraq by the Okayama District Court in 2009, the court provided further substance of the right to peaceful existence, including the right to refuse conscription, the right to refuse military service for reasons of conscience, and the right to refuse labor in the munitions industry[10].

Thus, as seen in the examples of the practice in Japan, some court cases show that the right to live in peace is enforceable as a standard for legal judgment.

The right to live in peace and detailed rights that derive from such right, which were recognized in the lawsuits in Japan, should be affirmed as rights which can add unique value to the human rights already recognized in the international conventions pertaining to human rights. The draft declaration on the right of peoples to peace should include such details of human rights concerning peaceful life which have not been mentioned in other existing international human rights treaties.

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[10] The judgment of the Okayama District Court dated February 24, 2009. It became a final judgment without being appealed.